IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.518 OF 2001

India International Co. Pvt. Ltd. ..Petitioner
Versus
The State of Maharashtra and Ors. ..Respondents

Mr.Rajiv J. Deokar for petitoner
Mr.K.R.Belosey for respondents

CORAM : P.V.KAKADE, J.

DATE : 13TH DECEMBER, 2005

P.C.:

1. The petitioner has preferred this Petition seeking to quash the impugned demand of Rs.7,50,000/= by Order bearing No.FLR 1199/5207/B-I dated 19.9.2000, FLR 192000/423/I dated 30.1.2001 and FLR 1199/5207/B-I dated 10.2.2001 passed by respondents, including respondent nos.2 and 3, who are the Commissioner of State Excise and Collector of Mumbai (City) State Excise Department.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The Petitioner is a Private Limited Company

incorporated under the Companies Act on 21.2.1955 with three Directors. On 28.5.199, three new additional Directors of the Company were appointed. Subsequently on 31.5.1999 share transfer deeds were executed in favour of the incoming Directors and subsequently on 1.6.1999 the existing Directors resigned from the Company. The Company therefore stood in the name of the new Directors. Transferor and transferee are not the members of the same family. It was the case of the petitioner before the appellate authority that it was a registered company under the Companies Act and is a body incorporated having perpetual succession and a common seal. In law, a Company is equal to a natural person and is a legal entity of its own. The identity of the Company is entirely separate from that of its shareholders. The act of members or shareholders do not alter the constitution of the company and legally the company never dies and remains in existence even after the change of its Directors till it is dissolved or liquidated in the manner specified in the act. It is to be noted that the Superintendent of State Excise Mumbai consequent upon the changes invoked the Circular of the State Government dated 20.8.1996 holding that the licence is transferred to another person, then five time

of the licence fee should be charged since the said person is not from the family members of the licencee. The notice further mentions that the shareholders purchased the shares from previous shareholders and since these shares are transferred from one name to another and therefore, as per the directions of the State the transfer fee to the extent of Rs.7,50,000/= was payable to the Government Treasury by the Petitioner.

. After the demand was made the petitioner moved the Commissioner of State Excise, State of Maharashtra, who after hearing both the parties came to the conclusion that the licence held by the Company virtually stood transferred in the name of new dispensation wherein holders of the original licence are totally excluded. It is further held that it is established position of law that to deal in liquor is the exclusive privilege of the Government which has been parted in favour of a person selected to the exclusion of all others and conferred the demand made by the concerned authority was justified and as such it was held that the Collector was right in directing the appellant to pay a privilege fee for transfer of licence

and order was upheld. Hence the present Petition.

4. In this regard it is to be noted that the concerned authorities appears to have relied upon the so called Circular dated 20.8.1996. Clause 4 of the said Circular stipulate that on every occasion of admission of partner in the licence, five times of the licence fee shall be paid as privilege fees and therefore, demand came to be made. In this regard my attention was invited to the provisions of the Bombay Prohibition (Privileges Fees) Rules, 1954 which set of Rules are applicable to the present dispute. Rule 5 deals with Fees for Transfer of a licence from one name to another and stipulates that the fee payable by any licensee for the privilege of having the transfer of his licence from one name to another shall be the same as the fee chargeable for the grant or renewal or continuance of the licence, whichever is higher.

. Rule 8 thereof deals with provision of assessment of fees for amendment of a licence, permit, pass or authorisation, which stipulates that the fee for the privilege of having an amendment made in the particulars entered in any licence, permit, pass or

authorisation granted under the Act on payment of a fee shall be Rs.10/ per amendment.

5. It was urged on behalf of the petitioner that the proper rule applicable to the present dispute is Rule 8 and not Rule 5 or Rule 6 which deals with exclusively with the partnership business. It is not disputed that the petitioner company is a legal entity and has remained the same, though the names of the shareholders are sought to be changed under Rule 8 of the said Rules and therefore, it is submitted on behalf of the Petitioner that the changes which were made was amounts to amendment as contemplated under Rule 8 of the said Rules and not a transfer as contemplated by Rule 5 or Rule 6 of the said Rules. In this connection, it is pertinent to note that Rule 6 deals with fees for admission in or withdrawal from the business of a partner and therefore, it is clear that it deals exclusively with the partnership business. The learned counsel for the State - respondent submitted that Rules 5 and 6 would be applicable to the present case because the change in fact about rules transferred and therefore the order passed by the concerned authority appears to be legal and proper. However, in this regard when it is

clear that the rules exclusively meant for partnership and does not mention the business of the company, it would not be legal and proper to apply the said rule also to the business of the company. If at all Legislature intended to make Rule 6 by pervasive to include the business of the company then there was no difficulty to mention the word "company" along with partnership business itself. Therefore, in my considered view, the Rule 6 does not cover the present dispute nor Rule 5 would be applicable to hold that it is a transfer of business from one name to another. It is especially so when admittedly that there is no change in the business of the company and what is changed is the name of the shareholders, who have come in the place of old shareholders and therefore, the amendment or correction was sought for in the relevant record.

6. In view of this position, I have no doubt whatsoever that the order passed by the concerned authorities including the Commissioner of State Excise of the State appears to be erroneous and cannot be upheld in law. The observation made in the impugned order to the effect that the licence held by the company "virtually stands" transferred in the name of new

dispension, appears to be farfetched especially when it is admitted position that the company has remained the same and therefore, the company which is a single entity is entitled to get names of new shareholders entered into the record by virtue of Rule 8 of the said Rules, and therefore, the impugned order cannot be stand in law.

7. The learned counsel for the respondent further made a submission that alternative remedy was available for the petitioner to seek revision before the Government of Maharashtra, however, this aspect cannot be considered at the time of final hearing of the petition, especially when that aspect was found to be considered at the time of admission of the petition when it was admitted and is pending for final hearing for more than four years. For the reasons recorded above the rule is made absolute. The Petition is allowed in terms of prayer clauses (a) and (b) and stands disposed of with no order as to costs.

8. The amount which is deposited by the Petitioner at the time of admission to the extent of Rs.1,50,000/= to be adjusted towards subsequent liabilities of the

petitioner company.